

Carrot or stick?



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Have the Maritime Transportation Security Act's regulations, guidelines, and navigation and information circulars improved security of ports and shipping? Have the Department of Homeland Security's C-TPAT, CSI and ATS improved container security? Despite great efforts, obvious vulnerabilities remain.

Take Customs and Border Protection's Automated Targeting System. On March 30 the Government Accountability Office found that ATS is essentially ineffective because there are no checks and balances to validate the screening process. Random checks are not allowed because of potential conflicts with C-TPAT. This is just one example of lack of coordination in security programs being implemented by DHS agencies, bureaus and services.

The public is frustrated by the apparent lack of a cohesive policy. Users of U.S. maritime transportation are aware of security needs, but there has been no corresponding cultural shift in how the shipping industry addresses security. Incremental improvements driven by government programs are not bold enough, do not withstand public scrutiny and may even stifle commercial initiative.

Since the passage of the 2002 International Ship and Port Facility Security Code, piracy incidents against commercial shipping have actually increased. The U.S. National Response Center's "one call does it all" has yet to show any increase in breach-of-security reports despite being a requirement for commercial ships and marine terminals since July 2004. Various marine industry and labor groups continue to resist efforts to implement the Transport Workers

Identification Credential. C-TPAT critics continue to cite examples of how easily security is compromised, even for certified users, and C-TPAT users have not seen the promised benefits of quicker clearance at ports.

The most obvious example of how government and marine industry have not met public expectations was the recent DP World controversy. The DPW issue showed how the general public's perception of port and cargo security continues to be fraught with fear, anxiety and confusion.

The security regulatory process parallels the development of environmental regulations before the Exxon Valdez spill. Until that incident, Congress was hesitant to associate strict liability and criminal liability with the marine shipment of bulk oil. Surprised by the level of public outrage, Congress was forced to include strict liability for marine oil pollution incidents with the Oil Pollution Act of 1990. Moreover, the slow response to the Exxon Valdez grounding by an Alyeska Pipeline Terminal response team led Congress to impose criminal liability for failure to report oil spills and for ineffective mobilization of oil spill response assets.

After OPA-90 was signed into law in the summer of 1990, many within the marine industry threatened to avoid the U.S. bulk oil trade rather than carry certificates of financial responsibility committing them to potential unlimited liability. International protection and indemnity clubs predicted a train wreck that would bring the U.S. economy to a halt.

The train wreck never occurred. What did occur was the creation of a quality tanker market for trading bulk oil into the United States. Proven and

effective vessel and facility response plans were established. First responders were trained. And to prevent potential criminal sanctions against the company and the individual employee, corporations emphasized the need for timely notification of potential oil-spill incidents.

In a relatively short period following OPA-90, a two-tiered international tanker market emerged. High-quality tanker operators and ship managers continued to transport and trade bulk oil in the U.S. market. Lower-quality, higher-risk operators went elsewhere. Oil terminal operations' spill prevention and preparedness also improved. Since OPA-90, the quantity and frequency of oil spills have vastly decreased. The American public has seen the improvement it expected.

The Exxon Valdez spill was a watershed event. It put in motion strict liability legislation that greatly affected how bulk oil would be traded and transported. OPA-90 led to a corporate cultural change, with oil companies and shipping companies taking comprehensive responsibility for their oil-spill prevention, preparedness and response protocols and practices.

Shouldn't these lessons be applied to maritime transportation and marine cargo container security? Or will a deadly maritime terrorism incident be needed? OPA-90 showed how a "carrot approach" — with suggestions of voluntary steps — is less effective than a "stick approach" and legislated strict and criminal liability.

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